UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
Division of Operations -Management
1099 14th Street, N.W.
Washington, D.C. 20570
(202) 273-2900 (Phone)
(202) 273-4247 (Fax)

June 10, 2011

The Honorable Mark R. Warner
United States Senate
Washington, D.C. 20510-4606

Re: The Boeing Company
Case 19-CA-32431

Dear Senator Warner:

Thank you for your May 24, 2011, letter addressed to former Deputy General Counsel John Higgins, Jr., on behalf of your constituents, [redacted] and others who emailed you through contact@warner.senate.gov to protest the decision to issue Complaint against The Boeing Company in Case 19-CA-32431. Your inquiry has been referred to me for response.

As Acting General Counsel Lafe Solomon advised in his letter to you dated June 8, 2011, the Complaint in this matter is based on long-settled Board law and is well-grounded in fact. A hearing in this matter is scheduled to begin in the near future, at which time a full evidentiary record will be developed, upon which an administrative law judge will make a decision which can be reviewed by the Board and ultimately, the Courts. Of course, as has been expressed to Boeing on several occasions, we also remain willing to discuss resolution of this dispute short of litigation.

I trust this letter responds to your inquiry. If you have any other questions, please do not hesitate to contact me.

Very truly,

Elizabeth Kilpatrick
Deputy Assistant General Counsel
Division of Operations-Management

MARK R. WARNER
VIRGINIA

COMMITTEES
BANKING, HOUSING, AND URBAN AFFAIRS
COMMERCE, SCIENCE, AND TRANSPORTATION
BUDGET
RULES AND ADMINISTRATION
JOINT ECONOMIC COMMITTEE

United States Senate

WASHINGTON, DC 20510–4606

May 24, 2011

Mr. John Higgins, Jr.
Deputy General Counsel
National Labor Relations Board
1099 Fourteenth Street, Nw, Room 11600
Washington, DC 20570-0001

Dear Mr. Higgins,

I have recently been contacted by several of my constituents from Virginia. Attached please find copies of their correspondence. I would appreciate it if you could look into this matter and provide me with an appropriate response. Thank you.

Sincerely,

Mark R Warner

MARK R. WARNER
United States Senator

MRW/ah
Enclosure

E-Mail Viewer

Message | Details | Attachments | Headers | Source

HTML

From: "contact@warner.senate.gov" <contact@warner.senate.gov>
Date: 4/26/2011 8:03:44 PM
To: "webmail@warner-iq.senate.gov" <webmail@warner-iq.senate.gov>
Cc:
Subject: National Labor Relations board

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<ISSUE>Lab</ISSUE>
<SUBJECT>National Labor Relations board</SUBJECT>
<MSG>
Dear Senator Warner,

While we all struggle to keep our heads above water, the unions are at it again. This time, they have pulled the NLRB into the act with them.

Boeing's decision to move to South Carolina and open a plant is exactly that..... Boeing's decision. The union thug mentallity must stop. The unions don't own Boeing or any other Corporation. Boeing has the right to decide in what state they want to build planes.
The NLRB should NOT be ALLOWED to decide where and when Boeing or any other Company/Corporation will do business.
Do not stand idley by as the Labor Relations Board attempts to strong arm Companies. Boeing could decide to move the whole company overseas..... and where would that leave all of us???

Sincerely,
[redacted]
</MSG>
<RESPONSE>Yes</RESPONSE>
</APP>

Close

E-Mail Viewer

Message | Details | Attachments | Headers | Source

HTML

From: "contact@warner.senate.gov" <contact@warner.senate.gov>
Date: 4/25/2011 5:55:44 PM
To: "webmail@warner-iq.senate.gov" <webmail@warner-iq.senate.gov>
Cc:
Subject: Obama, the NLRB and Boeing

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<ISSUE>emp</ISSUE>
<SUBJECT>Obama, the NLRB and Boeing</SUBJECT>
<MSG>Senator Warner,

I just read that Beoing has been told by the NLRB that they cannot build another plant in South Carolina. Fact is, the plant is already built and WAS scheduled to open until the NLRB backed by Obama's minions ruled against them because the new plant will be a non union shop. I find this ASSAULT on our freedom to be horrific. Since when can ANY government entity decide the fate of our business? Do you net smell the stink of government intruding too far with this decision? I ask you sir, what about the thousand or so jobs Obama just STOLE from regular working people and handed over to the unions? When will this ATROCITY end? I want to know wheere YOU stand in this. I need to know if you TRUKY represent Americans or if you think unions are the answer. I want to know if you think our greata country is as corrupt as the president and his administration. Since Obama was elected, we have watched every day as YOU, your cohorts in congress, and our government have STOLEN our money, our freedom, and our rights. Why is it we don't hear you on the news defending us? Are you on the other side? Do you seriously think socialism, wealth redistribution, and all the trappings of communism are good? I truly want to know where you stand.</MSG>
<RESPONSE>Yes</RESPONSE>
</APP>

Close

E-Mail Viewer

Message | Details | Attachments | Headers | Source

HTML

From: "contact@warner.senate.gov" <contact@warner.senate.gov>
Date: 4/27/2011 10:11:31 PM
To: "webmail@warner-iq.senate.gov" <webmail@warner-iq.senate.gov>
Cc:
Subject: REJECT THE NLRB BAILOUT

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<STATE>[redacted]</STATE>
<ZIP>[redacted]</ZIP>
<PHONE>[redacted]
<EMAIL>[redacted]</EMAIL>
<ISSUE>Lab</ISSUE>
<SUBJECT>REJECT THE NLRB BAILOUT</SUBJECT>
<MSG>Boeing's Washington workers belong to the International Association of Machinists and Aerospace Workers (IAM). The IAM went on strike four times since 1989, costing Boeing at least $1.8 billion in revenue. The new plant in South Carolina would be non-union.

The NLRB is declaring war on job creators and killing jobs!

reject the NLRB bailout!
</MSG>
<RESPONSE>Yes</RESPONSE>
</APP>

Close

E-Mail Viewer

Message | Details | Attachments | Headers | Source

HTML

From: "contact@warner.senate.gov" <contact@warner.senate.gov>
Date: 4/30/2011 12:39:11 PM
To: "webmail@warner-iq.senate.gov" <webmail@warner-iq.senate.gov>
Cc:
Subject: Your Silence

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<LAST>[redacted]</LAST>
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<ZIP>[redacted]</ZIP>
<PHONE>[redacted]</PHONE>
<EMAIL>[redacted]</EMAIL>
<ISSUE>Lab</ISSUE>
<SUBJECT>Your Silence</SUBJECT>
<MSG> We have seen over the past few days and weeks an overt push by the Modern Progressive Democratic caucus to undermine the basic principles of our American free enterprise system of commerce.

With complete disregard to the wishes of the citizens of the several states, the National Labor Relations Board (NLRB), which is supposed to be an advocate for the American people has instituted legal actions against an American manufacturing company to prevent it from operating in a "Right to Work" state giving preference to a "Closed shop" location. As if that was not enough, the NLRB has filed suit against two sovereign states objecting to those states legislating barring the "card check" concept for union organizing, a concept that allows unions to organize a company without a secret ballot election.

I have no problem with the concept of unions gathering together company employees in a common voice in negotiations with company management. But, both parties must accept the consequences of those negotiations and not expect the American people to bail them out as was done for Chrysler and GM. With regard to the public sector unions, to include the teacher unions, essentially negotiating over taxpayer money with the politicians the unions paid to put into office, this needs to stop. This is a disgrace.

I understand why my two Modern Progressive Democratic Senators are silent on this matter. They are both stooges of the labor unions and are not representatives of the people of the Commonwealth of Virginia. And, Virginia is a "Right to Work" state. So, no better can be expected of them.

Call, write and email your Congressman and Senators and tell them to clearly voice their

objections to the actions of the NLRB and do something to stop this bureaucratic rule by regulation trampling the Constitution and the sovereignty of the several states. This is bad stuff.

[redacted]

</MSG>
<RESPONSE>Yes</RESPONSE>
</APP>

Close

#27

United States Government

NATIONAL LABOR RELATIONS BOARD
Division of Operations-Management
Washington, DC 20570
www.nlrb.gov

May 19, 2011

The Honorable Mark R. Warner
United States Senate
Washington, DC 20510-4606

Re: Boeing Company
Case 19-CA-32431

Dear Senator Warner:

Thank you for your May 6, 2011 letter addressed to former Deputy General Counsel John Higgins, Jr., on behalf of your constituents, Mr. Tim Keating and [redacted] Mr. Keating, the Senior Vice President of Government Operations for the Boeing Company, raises concerns over certain statements attributed to Boeing representatives in a Complaint issued by this Agency in the above case on April 20, 2011, and attaches a May 3, 2011 letter from Boeing's Executive Vice President and General Counsel, Michael Luttig, to me, detailing the specific statements in dispute. I responded to Mr. Luttig's letter on May 9, 2011. A copy of my letter is enclosed for your review. Notably, before I authorized the Complaint, there were many conversations between Boeing's representatives and my office, and I personally met with Boeing's representatives, including Mr. Luttig, during which the facts and the law surrounding the circumstances of this case were discussed and every effort was made to resolve the matter without issuing a complaint. [redacted] concern is that the Complaint issued by this Agency is based on tenuous legal grounds. I assure you it is not. The Complaint, a copy of which is also enclosed, is based on long-settled Board law and is well-grounded in facts disclosed by our extensive investigation. A hearing in this matter is scheduled to begin in the near future, at which time a full evidentiary record will be developed, upon which an administrative law judge will make a decision which can be reviewed by the Board and, ultimately, the Courts. As I wrote Mr. Luttig on May 9, and as I have stated on other occasions, I stand ready to discuss with Boeing representatives the resolution of this dispute short of extended litigation.

Thank you for your inquiry. If I can be of any further assistance to you in this or any other matter, please do not hesitate to contact me.

Sincerely,

Lafe Solomon

Lafe E. Solomon
Acting General Counsel

Enclosure

United States Government

NATIONAL LABOR RELATIONS BOARD
1099 14th STREET NW
WASHINGTON DC 20570
www.nlrb.gov

May 9, 2011

J. Michael Luttig, Esquire
Executive Vice President & General Counsel
The Boeing Company
100 N Riverside MC 5003-6027
Chicago, IL 60606-1596

Re: The Boeing Company
Case 19-CA-32431

Dear Mr. Luttig:

This is in response to your May 3 letter to me concerning the above captioned case.

Your letter makes certain assertions and arguments concerning statements in the press about this matter. Needless to say, I don't agree with your contentions. There have been numerous conversations between my office and Boeing concerning the facts and the law surrounding the circumstances of this case so that each party is aware of the other's position. The appropriate forum to test those positions and the relevance and probative value of your assertions is through the development of an evidentiary record on which an administrative law judge can make a decision which can be reviewed by the Board and ultimately the Courts. Finally, while our earlier efforts to resolve this matter were unsuccessful, I still remain open to a resolution between the parties.

Sincerely,

Lafe E. Solomon

Lafe E. Solomon
Acting General Counsel

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

THE BOEING COMPANY

and Case 19-CA-32431

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
DISTRICT LODGE 751, affiliated with
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

COMPLAINT AND NOTICE OF HEARING

International Association of Machinists and Aerospace Workers District Lodge No. 751 ("Local 751" or the "Union"), affiliated with International Association of Machinists and Aerospace Workers ("IAM"), has charged in Case 19-CA-32431 that The Boeing Company ("Respondent" or "Boeing"), has been engaging in unfair labor practices as set forth in the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*

Based thereon, the Acting General Counsel of the National Labor Relations Board (the "Board"), by the undersigned, pursuant to § 10(b) of the Act and § 102.15 of the Board's Rules and Regulations, issues this Complaint and Notice of Hearing and alleges as follows:

1.

The Charge was filed by the Union on March 26, 2010, and was served on Respondent by regular mail on or about March 29, 2010.

2.

(a) Respondent, a State of Delaware corporation with its headquarters in Chicago, Illinois, manufactures and produces military and commercial aircraft at various facilities throughout the United States, including in Everett, Washington (the "facility"), and others in the Seattle, Washington, and Portland, Oregon, metropolitan areas.

(b) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of $500,000.

(c) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), both sold and shipped from, and purchased and received at, the facility goods valued in excess of $50,000 directly to and from points outside the State of Washington.

(d) Respondent has been at all material times an employer engaged in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.

3.

The Union is, and has been at all material times, a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors within the meaning of

§ 2(11) of the Act, and/or agents within the meaning of § 2(13) of the Act, acting on behalf of Respondent:

Jim Albaugh	—	Executive Vice President, Boeing; President and CEO of Integrated Defense Systems (until late August 2009); CEO, Boeing Commercial Airplanes (as of late August 2009)
Scott Carson	—	Executive Vice President, Boeing; CEO, Boeing Commercial Airplanes (until late August 2009)
Ray Conner	—	Vice President and General Manager of Supply Chain Management and Operations, Boeing Commercial Airplanes
Scott Fancher	—	Vice President and General Manager of the 787 Program
Fred Kiga	—	Vice President, Government and Community Relations
Doug Kight	—	Vice President, Human Resources, Boeing Commercial Airplanes
Jim McNerney	—	President, Chairman, and CEO
Jim Proulx	—	Boeing spokesman
Pat Shanahan	—	Vice President and General Manager of Airplane Programs
Gene Woloshyn	—	Vice President, Employee Relations

5.

(a) Those employees of Respondent enumerated in Section 1.1(a) of the collective bargaining agreement described below in paragraph 5(c), including, *inter alia*, all production and maintenance employees in Washington State, constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act (the "Puget Sound Unit").

(b) Those employees of Respondent enumerated in Section 1.1(c) of the collective bargaining agreement described below in paragraph 5(c), including, *inter*

alia, all production and maintenance employees in the Portland, Oregon area, constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act (the "Portland Unit").

(c) Since at least 1975 and at all material times, the IAM has been the designated exclusive collective bargaining representative of the Puget Sound Unit and the Portland Unit (collectively, the "Unit") and recognized as such representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 2, 2008, to September 8, 2012.

(d) Since 1975, during the course of the parties' collective-bargaining relationship, the IAM engaged in strikes in 1977, 1989, 1995, 2005, and 2008.

6.

On or about the dates and by the manner noted below, Respondent made coercive statements to its employees that it would remove or had removed work from the Unit because employees had struck and Respondent threatened or impliedly threatened that the Unit would lose additional work in the event of future strikes:

(a) October 21, 2009, by McNerney in a quarterly earnings conference call that was posted on Boeing's intranet website for all employees and reported in the Seattle Post Intelligencer Aerospace News and quoted in the Seattle Times, made an extended statement regarding "diversifying [Respondent's] labor pool and labor relationship," and moving the 787 Dreamliner work to South Carolina due to "strikes happening every three to four years in Puget Sound."

(b) October 28, 2009, based on its October 28, 2009, memorandum entitled "787 Second Line, Questions and Answers for Managers," informed employees, among other things, that its decision to locate the second 787 Dreamliner line in South Carolina was made in order to reduce Respondent's vulnerability to delivery disruptions caused by work stoppages.

(c) December 7, 2009, by Conner and Proulx in an article appearing in the Seattle Times, attributed Respondent's 787 Dreamliner production decision to use a "dual-sourcing" system and to contract with separate suppliers for the South Carolina line to past Unit strikes.

(d) December 8, 2009, by Conner in an article appearing in the Puget Sound Business Journal, attributed Respondent's 787 Dreamliner production decision to use a "dual-sourcing" system and to contract with separate suppliers for the South Carolina line to past Unit strikes.

(e) March 2, 2010, by Albaugh in a video-taped interview with a Seattle Times reporter, stated that Respondent decided to locate its 787 Dreamliner second line in South Carolina because of past Unit strikes, and threatened the loss of future Unit work opportunities because of such strikes.

7.

(a) In or about October 2009, on a date better known to Respondent, but no later than October 28, 2009, Respondent decided to transfer its second 787 Dreamliner production line of 3 planes per month from the Unit to its non-union site in North Charleston, South Carolina.

(b) Respondent engaged in the conduct described above in paragraph 7(a) because the Unit employees assisted and/or supported the Union by, *inter alia*, engaging in the protected, concerted activity of lawful strikes and to discourage these and/or other employees from engaging in these or other union and/or protected, concerted activities.

(c) Respondent's conduct described above in paragraph 7(a), combined with the conduct described above in paragraph 6, is also inherently destructive of the rights guaranteed employees by § 7 of the Act.

8.

(a) In or about October 2009, on a date better known to Respondent, but no later than December 3, 2009, Respondent decided to transfer a sourcing supply program for its 787 Dreamliner production line from the Unit to its non-union facility in North Charleston, South Carolina, or to subcontractors.

(b) Respondent engaged in the conduct described above in paragraph 8(a) because the Unit employees assisted and/or supported the Union by, *inter alia*, engaging in the protected, concerted activity of lawful strikes and to discourage these and/or other employees from engaging in these or other union and/or protected, concerted activities.

(c) Respondent's conduct described above in paragraph 8(a), combined with the conduct described above in paragraphs 6 and 7(a), is also inherently destructive of the rights guaranteed employees by § 7 of the Act.

9.

By the conduct described above in paragraph 6, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

10.

By the conduct described above in paragraphs 7 and 8, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of §§ 8(a)(3) and (1) of the Act.

11.

By the conduct described above in paragraphs 6 through 10, Respondent has engaged in unfair labor practices affecting commerce within the meaning of §§ 2(6) and (7) of the Act.

12.

As part of the remedy for the unfair labor practices alleged herein, the Acting General Counsel seeks an Order requiring either that one of the high level officials of Respondent alleged to have committed the violations enumerated above in paragraph 6 read, or that a designated Board agent read in the presence of a high level Boeing official, any notice that issues in this matter, and requiring Respondent to broadcast such reading on Respondent's intranet to all employees.

13.

(a) As part of the remedy for the unfair labor practices alleged above in paragraphs 7 and 8, the Acting General Counsel seeks an Order requiring Respondent

to have the Unit operate its second line of 787 Dreamliner aircraft assembly production in the State of Washington, utilizing supply lines maintained by the Unit in the Seattle, Washington, and Portland, Oregon, area facilities.

(b) Other than as set forth in paragraph 13(a) above, the relief requested by the Acting General Counsel does not seek to prohibit Respondent from making non-discriminatory decisions with respect to where work will be performed, including non-discriminatory decisions with respect to work at its North Charleston, South Carolina, facility.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to this Complaint. The answer must be **received by this office on or before May 4, 2011, or postmarked on or before May 3, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at ***www.nlrb.gov***, click on ***File Case Documents,*** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due

date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. *See* § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in this Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the **14th day of June, 2011, at 9:00 a.m.**, in **James C. Sand Hearing Room, 2966 Jackson Federal Building, 915 Second Avenue, Seattle, Washington**, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in

this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Seattle, Washington, this 20th day of April, 2011.

Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

FORM NLRB-4668
(4-05)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

Form NLRB-4338 (6/90)
(R19 – 3/94)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

The Boeing Company
Case: 19-CA-32431

20 April 2011

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 C.F.R. 102.16(a) or with the Division of Judges when appropriate under 29 C.F.R. 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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MARK R. WARNER
VIRGINIA

COMMITTEES
BANKING, HOUSING, AND URBAN AFFAIRS
COMMERCE, SCIENCE, AND TRANSPORTATION
BUDGET
RULES AND ADMINISTRATION
JOINT ECONOMIC COMMITTEE

United States Senate

WASHINGTON, DC 20510-4606

May 6, 2011

Mr. John Higgins, Jr.
Deputy General Counsel
National Labor Relations Board
1099 Fourteenth Street, Nw, Room 11600
Washington, DC 20570-0001

Dear Mr. Higgins,

I have recently been contacted by [redacted] of [redacted] and Mr. Tim Keating of Arlington, Virginia. Attached please find copies of their correspondence. I would appreciate it if you could look into this matter and provide me with an appropriate response. Thank you.

Sincerely,

Mark R Warner

MARK R. WARNER
United States Senator

MRW/ah

April 21, 2011

11 APR 28 PM 2:41

The Honorable Mark R. Warner
459A Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Warner:

The National Labor Relations Board (NLRB) is challenging the right of Boeing Corporation to build airplanes in South Carolina vice Washington State. This challenge has come after Boeing has spent $2 billion on a new plant and has hired 1000 workers in South Carolina.

The NLRB's complaint is based on the tenuous argument that Boeing's action in building in South Carolina discourages union membership and is thus a violation of federal law. To me, a layman in the field of labor law, this argument sounds singularly specious. How can locating in a right-to-work state be discouraging to union membership? Unions are not barred in South Carolina, nor are they required.

I urge you to bring pressure to bear on the NLRB to dismiss its complaint against Boeing immediately, thus assuring employment for 1000 people in South Carolina.

Sincerely,

[redacted]

6425184

The Boeing Company
1200 Wilson Blvd.
Arlington, VA 22209-1989

Dear Senator:

On April 20, 2011, the acting General Counsel of the National Labor Relations Board ("NLRB") filed a complaint against The Boeing Company claiming that Boeing's selection of Charleston, South Carolina for a new 787 aircraft final assembly line was an "unfair labor practice." The complaint challenges Boeing's 2009 decision to increase its production capacity with a new assembly plant in South Carolina, and demands as a remedy that the work in Charleston be moved to Puget Sound. Boeing commented on the complaint the day it was filed, describing it as legally frivolous and contrary to a 45-year unbroken line of Supreme Court precedent.

The NLRB's complaint misquotes and mischaracterizes statements and actions by Boeing executives. The NLRB's Acting General Counsel Lafe Solomon, however, has gone beyond the misquotations and mischaracterizations of the Boeing executives' statements that appear in the complaint by further distorting and embellishing upon those allegations in public. These distortions by Mr. Solomon and other NLRB officials appear on the NLRB's website, in statements to the media and, in particular, in an interview that Mr. Solomon gave to the New York Times, as reported on April 23. Intended or not, these statements mislead the public into believing that The Boeing Company "transferred" existing work away from our Puget Sound production location for the purpose of "punishing" our union employees. Neither The Boeing Company nor any of its executives ever said or intended any such thing. The NLRB's and Mr. Solomon's statements are a disservice to The Boeing Company, its executives, and to the 160,000 Boeing employees worldwide.

Boeing's Executive Vice President and General Counsel, J. Michael Luttig, sent Mr. Solomon a detailed letter that sets forth the misquotations and mischaracterizations that appear throughout the complaint and in the NLRB's public statements made since the filing of its complaint. Mr. Luttig calls upon Mr. Solomon to correct both his public statements and his misquotations and mischaracterizations of the Boeing executives' statements on which the NLRB complaint is based.

A copy of Mr. Luttig's letter to Mr. Solomon is attached.

Sincerely,

Tim Keating

Tim Keating
Senior Vice President,
Government Operations

487577

J. Michael Luttig
Executive Vice President &
General Counsel

The Boeing Company
100 N Riverside MC 5003-6027
Chicago IL 60606-1596

May 3, 2011

Lafe E. Solomon, Esquire
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001

Dear Mr. Solomon:

I write regarding statements in your complaint and elsewhere—including statements attributed to you in the *New York Times* on April 23—about Boeing's decision to place its new 787 final assembly line in South Carolina. A number of these statements, which are critical to your case against Boeing, fundamentally misquote or mischaracterize statements by Boeing executives and actions taken by the Company. You have a responsibility to correct these misquotations and mischaracterizations, for the public record and also for purposes of the complaint you have filed. Through these misquotations and mischaracterizations, you have done a grave disservice to The Boeing Company, its executives and shareholders, and to the 160,000 Boeing employees worldwide. And, of course, you have filed a complaint based upon these misstatements that cannot be credibly maintained under law.

Your Statement That Boeing "Transferred" Union Work

As an initial matter, repeated statements in the complaint allege that Boeing "*removed* work" from Puget Sound (¶6), "decided to *transfer* its second 787 Dreamliner production line" to South Carolina (¶7(a)), and "decided to *transfer* a sourcing supply program" to South Carolina (¶8(a)). Your April 20 press release makes the same assertion: "The NLRB launched an investigation of the *transfer* of second line work in response to charges filed by the Machinists union and found reasonable cause to believe that Boeing had violated two sections of the National Labor Relations Act."

As you well know, no work—none at all—was "removed" or "transferred" from Puget Sound. The second line for the 787 is a new final assembly line. As it did not previously exist in Puget Sound or elsewhere, the second assembly line could not have been "removed" from, "transferred" or otherwise "moved" to South Carolina. Simply put, the work that is and will be done at our Charleston, South Carolina final assembly facility is new work, required and added in response to the historic customer demand for the 787. No member of the International Association of Machinists' union (IAM) in Puget Sound has lost his or her job, or otherwise suffered

any adverse employment action, as a result of the placement of this new work in the State of South Carolina.

Your own Regional Director, whose office you have tasked with prosecuting this case, understands that, and has accurately and publicly described the matter differently than you. As the Seattle Times reported last year, "Richard Ahearn, the NLRB regional director investigating the complaint, said it would have been an easier case for the union to argue if Boeing had moved existing work from Everett, rather than placing new work in Charleston." Dominic Gates, *Machinists File Unfair Labor Charge Against Boeing over Charleston*, Seattle Times, June 4, 2010.

BOEING

Since no actual work was "transferred," it now appears that NLRB officials are already, via public statements, transforming the theory of the complaint to say that, because Boeing committed to the State of Washington that it would build all of the Company's 787s in that state, the building of airplanes in South Carolina constitutes "transferred" work or work "removed." Thus, on April 26, an NLRB spokeswoman, Nancy Cleeland, apparently told a news organization that "the charge that Boeing is transferring work away from union employees stems from the company's original commitment 'to the State of Washington that it would build the Dreamliner airplanes in this state.'"

The premise underlying that assertion—that Boeing committed to the State of Washington to build all of the Company's 787s in Washington—is false. Boeing did not commit to the State of Washington that it would build all of its 787s in that state. Boeing honored—and fully—all of its contractual commitments to the State of Washington long before the decision to locate the Company's new production facility in South Carolina. The notion that Boeing had somehow committed to Washington State to build all 787s in that state is neither mentioned nor even suggested either in the IAM's charge or in your recently filed complaint, and you never asserted that Boeing had made such contractual commitments to the State of Washington in the several discussions we have had with you in the months preceding your filing of the complaint. Had you done so, we would have explained to you why such an understanding was plainly incorrect. I call upon you to quickly and fully correct the record on this point. In addition to being wholly uninformed, it creates the impression that you and your office are now in search of a theory that will support a predetermined outcome, even a theory that has nothing to do with the National Labor Relations Act.

Your Statement That Boeing Sought To "Punish" Union Employees

Mischaracterizing what Boeing did by calling it a "transfer" of work, or suggesting that Boeing broke commitments to the State of Washington, is bad enough. Far more egregious, however, are the statements that have been made concerning the motives and intent of Boeing's leaders—specifically, that senior Boeing executives sought to "punish" union employees and to "threaten" them for

their past and possible future strikes, through the Company's statements and its location of the second final assembly line in South Carolina.

The *New York Times* quotes you as saying that Boeing "had a *consistent message* that [the Company and its Executives] were doing this to *punish* their employees for having struck and having the power to strike in the future." (Steven Greenhouse, *Labor Board Case Against Boeing Points to Fights to Come*, New York Times, April 23, 2010, emphasis added.) Neither your complaint nor the post-hoc statements you and other officials of the NLRB have made since the filing of the complaint offers a single Boeing statement—let alone a "consistent message"—that Boeing acted to "punish" its employees, and, needless to say, you offer no evidence of this in your national media interview either.

BOEING

The complaint alleges that Boeing Commercial Airplanes CEO Jim Albaugh stated that Boeing "decided to locate its 787 Dreamliner second line in South Carolina because of past Unit strikes, and threatened the loss of future Unit work opportunities because of such strikes." (Complaint ¶6(e).) The complaint cites a March 2, 2010 interview of Mr. Albaugh by the Seattle Times, but does not purport to be quoting any particular statement. The NLRB's website, however, offers a "fact sheet" that quotes Mr. Albaugh as saying: "The overriding factor [in transferring the line] was not the business climate. And it was not the wages we're paying today. It was that we cannot afford to have a work stoppage, you know, every three years." http://nlrb.gov/node/443

It would, of course, have been entirely permissible under existing law for Mr. Albaugh to have made a statement that the Company considered the economic costs of future strikes in its business decision to locate work in South Carolina—or even that it was the sole reason for such decision. But Mr. Albaugh did not even say either of these things. Mr. Albaugh's full statement was as follows:

> Well I think you can probably say that about all the states in the country right now with the economy being what it is. But again, the overriding factor was not the business climate and it was not the wages we're paying people today. It was that we can't afford to have a work stoppage every three years. *We can't afford to continue the rate of escalation of wages as we have in the past. You know, those are the overriding factors. And my bias was to stay here but we could not get those two issues done despite the best efforts of the Union and the best efforts of the company.*

The italicized sentences—which were deliberately omitted from your office's presentation of this quotation on its website—make clear that Mr. Albaugh was referencing two, rather than one, "overriding factors," only one of which is the risk of a future strike. These are critical omissions that directly contradict your apparent theory of this case.

Moreover, no reasonable reader of Mr. Albaugh's interview would depict it as part of a "consistent message" that Boeing sought to "punish" its union employees. Mr. Albaugh expresses his "bias" in favor of Puget Sound and lauds the good-faith efforts of both sides. He explains that the company's preference was to locate the new production line in Puget Sound and that both the company and the union made good-faith efforts to accomplish that shared objective. Thus, when not misquoted, it is not even arguable that Mr. Albaugh's statement constitutes a "message" of "punishment" to the union for its past or future strike capability.

BOEING

The complaint's attempt to depict a statement by Jim McNerney, Boeing's Chairman and Chief Executive Officer, as a threat to punish union employees is but another example of mischaracterization. The complaint alleges that Mr. McNerney "made an extended statement regarding 'diversifying [Boeing's] labor pool and labor relationship,' and moving the 787 Dreamliner work to South Carolina *due to* 'strikes happening every three to four years in Puget Sound.'" (Complaint ¶6(a) (emphasis added).)

He did not say that at all. The allegation is a sleight-of-hand in two obvious respects, accomplished by the selective misquotation of Mr. McNerney's actual statements. First, Mr. McNerney was *not* making an "extended statement" about *why* Boeing selected Charleston. He was responding to a reporter's question about the cost of potentially locating a new assembly line in Charleston. And in fact, the decision to locate the new final assembly line in South Carolina had not even been made at the time Mr. McNerney's statements were made. Second, Mr. McNerney answered only the question as to comparative costs that was asked. Thus, in the passages you misquote and mischaracterize, he discussed the relative costs of a new facility in a location other than Puget Sound, versus the potential costs associated with "strikes happening every three to four years in Puget Sound." He did not say, as you allege through the complaint's misquotation, that Boeing selected Charleston "due to" strikes.

And Mr. McNerney did not even remotely suggest that what would later turn out to be the decision to open a new line in Charleston was *in retaliation for* such strikes, as you would have to establish to obtain the remedies you seek in your complaint. He did not say, he did not suggest, and he did not imply in any respect that Boeing intended to punish union employees or that a decision to locate a new facility other than in Puget Sound would or might be made to punish the union for past strikes or because of their power to strike in the future. Neither did he say, suggest, or imply that any existing union work was being transferred to Charleston. His answer cannot be cited in support of the legal theories in the complaint, much less the sweeping statement you made to the *New York Times* about Boeing's "consistent message" that Boeing and its executives sought to "punish" the Company's union employees.

Finally, Mr. McNerney's answer to a reporter's question *was not* "posted on Boeing's intranet website for all employees," much less posted for the purpose of

sending an illegal message under the NLRA, as the complaint incorrectly and misleadingly suggests.

Nor do any of the other few statements you reference in your complaint—which I attach to this letter—remotely suggest an intent to "punish" the Company's unionized employees. Quite the contrary: these statements show, at most, that the Company considered (among multiple other factors) the risk and potential costs of future strikes in deciding where to locate its new final assembly facility. Those have been deemed permissible considerations by an unbroken line of Supreme Court and NLRB precedent for 45 years. Not only that, but, as you know, Boeing reached out to the IAM in an effort to secure a long-term agreement that would have resulted in placing the second line in Puget Sound. Although those negotiations were not successful, that effort alone defeats your wholly unsupported claim that Boeing executives sent a "consistent message" that Boeing's decision was intended to "punish" the union for past strikes.

BOEING

What you said to a national newspaper, that Boeing made a billion-dollar decision to "punish" its employees, is a very serious—indeed, intentionally provocative—allegation against Boeing's leaders. Those leaders are deeply committed to all of the men and women who work for the Company, those represented by unions and those who are not. Your statement implies that Boeing's most senior executives acted out of personal spite and retribution toward its labor union, as opposed to acting in the interests of the Company, the Company's employees, and the Company's shareholders. You have no support for that statement whatsoever.

Your Statement That Boeing's Statements And Actions Were So Demonstrably Unlawful That You Were Compelled To File The Complaint

You also told the *New York Times* that, given the Company's so-called "consistent message" that the Company intended to "punish" the union for its prior strikes and its power to strike in the future, you had no choice but to issue a complaint. (Specifically, you said: "I can't not issue a complaint in the face of such evidence.") Among other reasons, that statement is puzzling, to say the least, in light of the course of Boeing's discussions with you and your office concerning this matter over the past six months. In particular, it is hard to reconcile with what has been your repeated statement that you did not believe this was a matter in which the NLRB should be involved and that you would take no action on the matter if Boeing agreed that it would not lay off any 787 employees in Puget Sound during the duration of its collective bargaining agreement with the IAM.

We of course understand that you reversed your position and abandoned the agreement that you yourself sought from Boeing after your further discussions with the complainant. But the point is this: It is exceedingly difficult to understand how you could have proposed and then agreed to such a resolution if, as you now say, you believed that the statements and actions by Boeing and its executives were so

egregious that the law literally compelled a complaint by the NLRB. Of course, the law compelled no such thing.

Your Statement That The Complaint Does Not Seek To Close Charleston

Finally, there is the issue of your articulation of the remedy sought in this complaint. The complaint seeks an order directing Boeing to "have the [IAM] operate [Boeing's] second line of 787 Dreamliner aircraft assembly production in the State of Washington." Notwithstanding that you are seeking this remedy, your office has been at pains since filing the complaint to state publicly that this is not equivalent to an order that Boeing "close its operations in South Carolina." *Fact Check*, available at www.nlrb.gov (post of April 26, 2011). We and the public would be interested to hear your explanation as to why you believe that to be the case. Boeing's current plan is to produce a maximum of ten 787s per month: seven in Puget Sound, and three on the second line in Charleston. If the NLRB were to order Boeing to produce out of Puget Sound the three 787s per month that are planned to be assembled in Charleston, that would of course require the production of all of the Company's planned 787 production capacity in Puget Sound. That fact was explained repeatedly to you and your staff in our extended discussions before you filed the complaint.

* * * * * * *

Boeing intends to put this pattern of misquotations and mischaracterizations before the Administrative Law Judge, and ultimately, before the National Labor Relations Board itself in upcoming proceedings, Mr. Solomon. To the extent they reflect misunderstandings of the facts on your part, we would expect your prompt withdrawal of this complaint.

Sincerely yours,

J. Michael Luttig
Executive Vice President
& General Counsel
The Boeing Company

Attachment

Statements Referenced in the NLRB Complaint

6(a) - James McNerney, 2009 3rd Quarter Earnings Call, October 28, 2009

. . . . There would be execution challenges associated with that choice [of Charleston]. But keep in mind that we've got a pretty good-sized operation down in Charleston today. The -- there would be some duplication. We would obviously work to minimize that. But I think having said all of that, diversifying our labor pool and labor relationship, has some benefits. I think the union IAM and the Company have had trouble figuring it out between themselves over the last few contract discussions.

And I've got to figure out a way to reduce that risk to the Company. And so some of the modest inefficiencies, for example, associated with a move to Charleston, are certainly more than overcome by strikes happening every -- every three or four years in Puget Sound and the very negative financial impact of the Company, our balance sheet would be a lot stronger today had we not had a strike last year. Our customers would be a lot happier today, had we not had a strike last year. And the 787 program would be in better shape had we not. And so I don't blame -- I don't blame this totally on the union. We just haven't figured out a way, the mix doesn't -- isn't working well, yet. So we've either got to satisfactory satisfy ourselves the mix isn't different or we have to diversify our labor base.

6(b) - "787 Second Line Questions and Answers," 10/28/09

Q3: Was one site a higher cost than the other?

A: All things taken into account, this decision will provide economic advantages by improving our competitiveness and reducing vulnerability to delivery disruptions due to a host of factors, from natural disasters to homeland security issues and work stoppages. We're electing not to get into how individual sites fared in specific areas of the evaluation.

* * * * * * * * *

Q8: We understand you were pushing the union for a no-strike agreement and came close to getting a 10-year deal. Obviously you didn't reach an agreement. Was that the factor that tipped the decision?

A: It was an important part of our discussion with the union, but it wasn't the only factor in our decision. In the final analysis, this came down to ensuring our long-term global competitiveness and diversifying the company to protect against the risk of production disruptions that can occur for a variety of reasons, from natural disasters, to homeland security threats, to work stoppages. While we didn't reach a long-term agreement, we felt our discussions with the IAM were productive and focused on the

right things -- global competitiveness (including emerging competitors), and ways to sustain a reliable, on-time flow of deliveries to our customers. We look forward to moving forward with the IAM in a positive way to grow our business in an increasingly competitive market.

* * * * * * * *

Q26: You say that having a second line in Charleston reduces risk, but if the IAM goes on strike in the Puget Sound again they will halt your production lines. What does a second line in another state really do for you then?

A: Geographically diversifying final assembly on the 787 will protect a portion of deliveries against disruption from both natural and man-made events, including work stoppages due to labor disputes. Having the second line will also give us assurance and flexibility in how we introduce derivatives such as the 787-9.

6(c) - *Seattle Times* article, December 7, 2009

Boeing spokesman Jim Proulx cited strikes in the Puget Sound region as a major factor in the decision. With a second supplier for every part, Boeing potentially could continue producing Dreamliners in South Carolina even if the Machinists went on strike here.

"Repeated labor disruptions have affected our performance in our customers' eyes," Proulx said. "We have to show our customers we can be a reliable supplier to them." The second production line "has to be able to go on regardless of what's happening over here," he added.

* * * * * * * *

Ray Conner, vice president and general manager of supply-chain management and operations, sent a message Monday informing all Boeing Commercial Airplanes managers of the dual-sourcing decision.

"We will immediately begin identifying, selecting and contracting with suppliers to stand up fully operational coproduction by 2012," Conner's message said.

Proulx said Boeing has not determined how much work will be replicated within the company in the new Charleston facility and how much may go to outside suppliers.

When Boeing broke ground on its Charleston assembly line in November, the company disclosed extensive plans for other buildings at the facility. Among these is a "fin and rudder shop," which suggests the tail fin may be built at Boeing Charleston.

But Proulx said, "It's too soon to say what will go where."

He said the replication of parts sourcing also would "accommodate the ramp-up" required to shift to a planned rollout of 10 planes a month by the end of 2013.

* * * * * * * *

Conner's message said the union knew this was coming.

"We informed the (IAM) of our plans to begin dual sourcing during the company/union discussions preceding our decision to place the second 787 line in South Carolina," Conner's message to managers stated. "We remain committed to strengthening our working relationship with the union."

* * * * * * * *

Boeing's Proulx said potential external suppliers are being assessed "based on capabilities, based on their ability to produce high-quality components and at the best value."

"We'll review supplier expertise, and we'll ensure that the right level of training and oversight is in place to make sure the performance standards are met," he said.

Conner's message to managers emphasized the decision means duplication, not replacement, of work done in this region.

"We are not moving any work that Boeing employees are currently performing — we are just adding additional sources," Conner said.

6(d) – *Puget Sound Business Journal* Article, December 8, 2009

"Dual-sourcing and co-production will allow us to maintain production stability and be a reliable supplier to our customers," he said in the memo.

* * * * * * * *

Boeing spokesman Jim Proulx said it was "too early" to tell if the new production will be contracted out or done by Boeing itself at the new South Carolina site, or elsewhere in the country.

He said this is not indicative of a wholesale movement of existing production away from this region.

"There will be no jobs lost as part of this move. There are no plans to take this work away," he said.

6(e) -- Jim Albaugh Interview with the *Seattle Times*, March 2, 2010

> Well I think you can probably say that about all the states in the country right now with the economy being what it is. But again, the overriding factor was not the business climate and it was not the wages we're paying people today. It was that we can't afford to have a work stoppage every three years. We can't afford to continue the rate of escalation of wages as we have in the past. You know, those are the overriding factors. And my bias was to stay here but we could not get those two issues done despite the best efforts of the Union and the best efforts of the company.

NLRB COMPLAINT LEGAL FACT SHEET

Boeing's decisions

- The complaint alleges that Boeing "decided to transfer its second 787 Dreamliner production line" from Puget Sound to South Carolina. (¶ 7(a).) This is incorrect. The second final assembly line is new work that was never located in Puget Sound and was never planned or scheduled to be in Puget Sound. No IAM represented employees have lost, or will lose, their jobs as a result of Boeing's decision In fact, Boeing has added over 2,000 union jobs in Puget Sound since the decision.

- The complaint also alleges that Boeing "decided to transfer a sourcing supply program" for the 787 from Puget Sound to South Carolina, or to subcontractors. (¶ 8(a).) That is incorrect. The sourcing supply program, like the assembly line itself, is new work. There is no transfer of work out of Puget Sound.

- The complaint alleges that Boeing selected South Carolina for its new assembly line and dual sourcing "because" employees represented by the IAM had gone on strike in the past "and to discourage" employees from going on strike in the future. (¶¶ 7(b), 8(b).) That is incorrect. Among other factors, Boeing's decision was properly based on its need to ensure continuous production capability for the 787 and to mitigate the risk of financial impacts on Boeing's customers and shareholders caused by possible *future* strikes. This is, of course, a permissible consideration under settled law which makes plain that an employer's interest in avoiding or mitigating the economic harm caused by anticipated strikes is a legitimate business objective. *American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965); *NLRB v. Brown*, 380 U.S. 286 (1965)

Boeing's statements

- The complaint alleges that Boeing told its employees that it "would remove or had removed work" from Puget Sound. (¶ 6.) That is incorrect. No work has been "removed" from Puget Sound. The second final assembly line and its sourcing supply program are new work. Nothing is being taken from Puget Sound, and Boeing has never said otherwise.

- The complaint alleges that Boeing threatened or impliedly threatened that IAM members in Puget Sound would lose "additional work" if they went on strike in the future. (¶ 6.) That is incorrect. Boeing never threatened to take any work away from Puget Sound (much less "additional work") and has in fact added over 2,000 IAM jobs there since its Puget Sound decision.

- The complaint alleges that Jim McNerney, in a quarterly earnings statement, said that Boeing was "moving the 787 Dreamliner work to South Carolina." (¶ 6(a).) That is incorrect. First, no work has been moved from Puget Sound to Charleston or anywhere else. There is no reduction in production at Puget Sound, and no jobs will be lost. The South Carolina assembly line is new work only. Second, Mr. McNerney never used the

term "moving," as the complaint makes clear by excluding that word from quotation marks.

- The complaint alleges that Jim Albaugh, in a videotaped interview, "threatened the loss of future work opportunities [for IAM members in Puget Sound] because of [past] strikes." That is incorrect, as a review of the videotape makes clear. Mr. Albaugh never threatened the loss of any jobs in Puget Sound, and none are planned. To the contrary, Mr. Albaugh simply said that among the factors we considered in making the decision were the economic impact of possible future IAM strikes, the delivery delays that future strikes would cause, and the potential erosion of customer confidence. The law expressly permits an employer to consider the economic impact of strikes in making work placement decisions. Avoiding or mitigating the impact of strikes is a legitimate business objective, and discussing that objective is not illegal. *American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965); *NLRB v. Brown*, 380 U.S. 286 (1965)

Legal arguments

- The complaint alleges that Boeing has discriminated in the "hire or tenure or terms or conditions of employment of its employees" in order to discourage employees from joining unions (¶ 10.) That is incorrect. There will be no loss of work or other effects in Puget Sound as a result of Boeing's decisions. Boeing is not laying anyone off, refusing to hire anyone, paying anyone differently, or changing anyone's job responsibilities or working conditions as a result of its decisions. Boeing has not, and will not, discriminate against any employee or applicant because of their membership in, or support of, a labor union.

- The complaint argues that Boeing's decisions were "inherently destructive" of employees' union rights. (¶¶ 7(c), 8(c).) That is incorrect. For over 35 years, both the Board and Supreme Court have agreed that an employer's actions designed to blunt the effects of anticipated future strikes are not inherently destructive of union rights. *See NLRB v. Brown*, 380 U.S. 278, 283 (1965). Further, no IAM member has lost their job nor had their working conditions adversely affected by Boeing's decisions. Finally, it is hard to understand how Boeing's exercise of a right it had expressly under its contract with the IAM could possibly be "inherently destructive" of the union's right.

- The complaint argues that Boeing's statements about its decision-making process interfered with, restrained, and coerced employees in the exercise of their rights under federal law. (¶ 9.) That is incorrect. In making the statements identified in the Complaint, Boeing leaders were explaining the lawful reasons behind the business decision to construct a new production line in South Carolina. The NLRA (the federal labor law governing employees' rights to act collectively in a union) permits employers to explain their "views, argument[s], or opinion[s]" as long as there is no "threat of reprisal or force or promise of benefit." § 8(c), 29 U.S.C. § 158(c). When Boeing explained the reasons for its decisions, no employee was ever threatened with job loss or other harm, and no such harm has materialized.

Denny Rehberg
State of Montana

Appropriations Committee
Labor, Health and Human Services, and Education
Chairman
Energy and Water Development
Legislative Branch

Congress of the United States
House of Representatives

June 6, 2011

Mr. Lafe E. Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D. C. 20570

Dear Mr. Solomon:

As Chairman of the Labor, Health and Human Services, Education and Related Agencies Appropriations Subcommittee, I take my oversight responsibilities very seriously. And while that most often involves matters of a fiscal nature, it is also my role to vigorously address any impropriety and to prevent any abuse of authority or policy overreach from occurring within any agency under the jurisdiction of this subcommittee.

I am writing regarding the National Labor Relations Board's ("NLRB") actions in response to a decision by The Boeing Company ("Boeing") to locate its new 787 Dreamliner manufacturing facility in Charleston, South Carolina. In making this decision, Boeing sought to achieve economic competitiveness for its global customer base, create jobs and an economic boom to a state that has nearly 10% unemployment, and maintain its status as a world leader in the aerospace industry. Boeing has a strong record of providing good-paying jobs for American workers, including in my home-state of Montana, and for helping keep America safe. This is exactly the type of private enterprise expansion our economy needs to drive itself through a still-sluggish recovery.

I believe the NLRB's decision to issue a complaint against Boeing in this matter represents a complete breach of the Federal government's role in regulating private industry and that the remedy cited therein is extraordinary and unprecedented. The remedy provided for in this complaint would require Boeing to move the second manufacturing line to the state of Washington. It is more than troubling to me that any agent of the Federal government would have the audacity to seek to overturn legitimate, core business decisions of a private enterprise. Should you succeed in this complaint, not only would Boeing have to abandon the over $1 billion it has currently spent on this facility over the last 17 months, it would also surely need to spend considerably more to build new capacity in Washington. The lost investment and delay in time would significantly impair the company's ability to meet customer demands and commitments for existing orders.

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Your complaint, Mr. Solomon, strikes at the heart of Boeing's respected business model, and is reportedly already having a chilling effect on entity's who are considering constructing new facilities in the United States. At a time when this economy needs all the investment it can get, this draconian remedy sends exactly the wrong message to all businesses, large and small, and creates an overwhelming disincentive to new economic investment.

In a recent statement you said that "there is nothing remarkable or unprecedented about the complaint issued against the Boeing Company on April 20... [t]he complaint involves matters of fact and law that are not unique to this case....". I do find this complaint remarkable, and I am seriously concerned with the use of agency resources to pursue such an extraordinary and unusual remedy given the detrimental economic impact it is certain to cause. At the very least, the NLRB needs to articulate a clear basis for this complaint.

Therefore, I am requesting examples of other complaints where the Office of General Counsel has made similar allegations that were:

1. Based upon an entity's decision regarding where to locate new work or a new production/manufacturing line, rather than the transfer of existing work (which is the case with Boeing), and

2. Made in absence of the entity being formally accused or cited for taking adverse actions against union employees.

Please also provide information regarding the resolution of such cases, including final remedies, if any.

Thank you very much for your timely response to my request.

Sincerely,

Denny Rehberg

Denny Rehberg
Chairman
House Appropriations Committee
Subcommittee on Labor, Health and Human Services, Education and Related Agencies

United States Senate

COMMITTEE ON HEALTH, EDUCATION
LABOR, AND PENSIONS
WASHINGTON, DC 20510-6300

May 3, 2011

Mr. Lafe Solomon
Acting General Counsel
Office of the General Counsel
National Labor Relations Board
1099 14th St. NW
Washington, DC 20570-0001

Dear Mr. Solomon:

We are writing to express our strong concerns about your April 20th complaint filed against The Boeing Company. The complaint alleged that Boeing's decision to open a new production line for construction in South Carolina constituted an unfair labor practice. We strongly disagree. And, we are troubled about the chilling effect that your action may have on business decisions across the country.

We have a duty to ensure that the National Labor Relations Act ("the Act") is being enforced in a fair manner. In this and other decisions, we believe that you have ignored the proper balance set forth in the Act between the employees' right to collectively bargain and the employers' right to due process. We question the legal reasoning and motive behind the complaint, as well as the proposed remedy to force Boeing to move its additional production line to Washington State.

It is clear that Boeing's legitimate business decision had no adverse impact on the Puget Sound workforce – indeed, 2,000 additional jobs have been created there since 2009. Under well-established precedent, employers may consider mitigating the impact of strikes as a business objective. Given the multitude of U.S. industries dependent on the product forthcoming from this production line, the desire to ensure continuity of operations is only logical.

We are also concerned about the timing of your announcement. Boeing announced its decision to open an additional production line in South Carolina in October 2009. However, your office waited until April 2011 to file the complaint, just three months before the new production line is scheduled to begin in July 2011. This complaint has the potential to eliminate thousands of newly created and well-compensated jobs in South Carolina. It will have a negative effect on important decisions made by American businesses every day regarding who to employ and where to expand, and negate the

ability of states to attract established U.S. employers by providing financial incentives and welcoming business climates.

In today's economy most U.S. businesses, including Boeing, are competing on an international scale. President Obama appears to have recognized that fact, stating in a January 2011 speech about America's competitiveness, that, "Our challenge is to do everything we can to make it easier for folks to bring products to market and to start and expand new businesses and to grow and hire new workers." We agree with the President. And, that is why we are so deeply troubled by your decision regarding Boeing's business operations.

While we understand the complaint process is still in the early stages, there is a need for the Board to explain the reasoning in this case to Congress. As your nomination is brought before our Committee, we will be asking for a greater explanation of your actions.

Sincerely,

Senator Michael B. Enzi

Senator Lamar Alexander

Senator Richard Burr

Senator Johnny Isakson

Senator Rand Paul

Senator Orrin G. Hatch

Senator John McCain

Senator Pat Roberts

Senator Lisa Murkowski

Senator Mark Kirk

ALAN WILSON
ATTORNEY GENERAL

April 28, 2011

Lafe E. Solomon, Esquire
Acting General Counsel
National Labor Relations Board
1099 14th Street, NW, Suite 8600
Washington, DC 20570

Dear Mr. Solomon:

As Attorneys General of our respective states, we call upon you, as Acting General Counsel of the National Labor Relations Board ("NLRB"), to withdraw immediately the complaint numbered 19-CA-32431 against Boeing. This complaint represents an assault upon the constitutional right of free speech, and the ability of our states to create jobs and recruit industry. Your ill-conceived retaliatory action seeks to destroy our citizens' right to work. It is South Carolina and Boeing today, but will be any of our states, with our right to work guarantees, tomorrow.

The right to work, uninhibited by compulsory unionism, is a precious right and is constitutionally enforceable through our states' right to work laws. See Retail Clerks Int'l v. Schermerhorn, 375 U.S. 96 (1963). Such laws are designed to eliminate union affiliation as a criterion for employment. However, the NLRB, through this single proceeding, attempts to sound the death knell of the right to work. Additionally, this tenuous complaint will reverberate throughout union and non-union states alike, as international companies will question the wisdom of locating in a country where the federal government interferes in industry without cause or justification.

Furthermore, this complaint disrupts, and may well eliminate, the production of Boeing 787 Dreamliners in South Carolina. In fact, Boeing has expanded its operations to meet product demand in South Carolina, while adding new jobs in Washington State. The complaint charges Boeing with the commission of an unfair labor practice, but appears to do so without legal and factual foundation. This unparalleled and overreaching action seeks to drive a stake through the heart of the free enterprise system. The statements of Boeing officials cited in your complaint are the innocent exercise of the company's right of free speech. The Supreme Court long ago made it clear that the NLRA does not limit, and the First Amendment protects, the employer's right to express views on labor policies or problems. **N.L.R.B. v. Va. Electric and Power**, 314 US 469,

477 (1941). As the Court recently reiterated in **Citizens United v. FEC**, 130 S. Ct. 876, 899-90 (2010), a corporation is not a second class citizen in terms of First Amendment protection.

Our states are struggling to emerge from one of the worst economic collapses since the Depression. Your complaint further impairs an economic recovery. Intrusion by the federal bureaucracy on behalf of unions will not create a single new job or put one unemployed person back to work.

The only justification for the NLRB's unprecedented retaliatory action is to aid union survival. Your action seriously undermines our citizens' right to work as well as their ability to compete globally. Therefore, as Attorneys General, we will protect our citizens from union bullying and federal coercion. We thus call upon you to cease this attack on our right to work, our states' economies, and our jobs.

We look forward to your immediate response.

Sincerely,

Alan Wilson

Alan Wilson
Attorney General

[Signatures continue next page]

Cc: Respective Congressional Delegations

Ken Cuccinelli
Attorney General
Commonwealth of Virginia

Jon C. Bruning
Attorney General
State of Nebraska

Greg Abbott
Attorney General
State of Texas

Samuel S. Olens
Attorney General
State of Georgia

Pam Bondi
Attorney General
State of Florida

Luther Strange
Attorney General
State of Alabama

E. Scott Pruitt
Attorney General
State of Oklahoma

Tom Horne
Attorney General
State of Arizona

ALAN WILSON
ATTORNEY GENERAL

April 28, 2011

Dear Members of Congress:

Today, Attorneys General from across the country joined me in sending the attached letter to Lafe Solomon, Acting General Counsel of the National Labor Relations Board, regarding the NLRB's complaint against Boeing. This complaint is an ill-conceived retaliatory action filed on behalf of the labor unions.

Our letter calls on the NLRB to immediately withdraw their complaint against Boeing and to cease their attack on our state, our economy and our right to work.

As stated in the letter, "the NLRB, through this single proceeding, attempts to sound the death knell of the right to work. Additionally, this tenuous complaint will reverberate throughout union and non-union states alike, as international companies will question the wisdom of locating in a country where the federal government interferes in industry without cause or justification."

I sincerely hope that you will share our letter with your colleagues and will join us and in calling upon Mr. Solomon and the NLRB to stop their aggressive actions against South Carolina, our citizens, and our right-to-work.

As you are aware, Mr. Solomon previously threatened federal litigation against South Carolina, along with Arizona, South Dakota, and Utah over the constitutional amendments similar to the one 86.2% of South Carolina voters passed to ensure employees maintained the right to a secret ballot in a union election. This week, the NLRB announced its intention to go forward with suits against Arizona and South Dakota and that limited resources curtailed its ability to bring action against South Carolina and Utah.

Thank you again for all you do for our state in Washington and please keep me and my office informed of actions in Washington in support of our efforts to stop the NLRB's attack on our right to work.

Sincerely,

Alan Wilson

Alan Wilson

Congress of the United States
Washington, DC 20515

May 13, 2011

Lafe E. Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dear Acting General Counsel Solomon:

We have closely monitored the activities at your office for several months and have become increasingly concerned by what we perceive to be an activist, job-destroying agenda.

Since September 2010, you have issued multiple memoranda on issues ranging from the use of uncommon remedies to the scope of deference to a contractual arbitration award. On March 11, 2011, you asked regional staff to identify opportunities for the National Labor Relations Board (NLRB) to overrule the 2007 decisions in *Grosvenor Resort* and *St. George Warehouse*, requiring employers to show that workers who lost their jobs due to unfair labor practices did not make reasonable efforts to reduce or mitigate their damages. Just last month, you informed the Attorneys General of Arizona, South Dakota, Utah, and South Carolina of plans to initiate a federal lawsuit that would invalidate amendments to their state constitutions guaranteeing secret ballot elections in union representation campaigns. These actions represent a pattern of bureaucratic activism that calls into question the objectivity and credibility of your office.

The most recent example of this apparent bias is found in your complaint against The Boeing Corporation (Boeing). Although the facts of the case are still in dispute, it appears no union employee at the Puget Sound facility has lost his or her job as a result of Boeing's decision to open a second production line in South Carolina. On the contrary, Boeing has added more than 2,000 union jobs in Puget Sound. In filing this complaint, you are sacrificing South Carolina jobs to further an activist agenda, effectively robbing Peter to pay Paul. The ramifications of this case extend beyond one specific state and will instead have a lasting impact on job creators across the country as they weigh the advantages and disadvantages of future investment in the United States.

Taken together, your actions threaten future economic growth and job creation and reflect an unsavory culture of union favoritism. We demand you cease your bureaucratic activism

immediately and restore the objectivity that is essential to the effectiveness and credibility of the General Counsel's office.

Sincerely,

Rep. Joe Wilson

Rep. Trey Gowdy

Rep. Virginia Foxx

Rep. Duncan D. Hunter

Rep. Tim Walberg

Rep. Scott DesJarlais

Rep. Todd Rokita

Rep. Kristi Noem

Rep. Martha Roby

Rep. Dennis Ross

Rep. Mike Kelly

United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

May 19, 2011

Mr. Lafe Solomon
Acting General Counsel
Office of the General Counsel
National Labor Relations Board
1099 14th St. NW
Washington, DC 20570-001

Dear Mr. Solomon:

We are writing in regard to the April 20th complaint filed by your office in a case involving the Boeing Company and the International Association of Machinists. The question at issue in this case is a critically important one: whether workers who exercised their rights under the law faced illegal discrimination and retaliation. This is a charge of serious misconduct that affects the rights of thousands of hardworking people.

The complaint has only recently been filed, after what we understand were months of extensive, but unfortunately unsuccessful, attempts at conciliation. The case will now proceed through a well-established adjudicative process where the facts of the case and the application of the law to those facts will be determined by an Administrative Law Judge, the National Labor Relations Board (NLRB) and – if the parties desire – the federal courts.

We do not write to express any opinion about the proper outcome of this case. However, we do feel strongly that both parties have the right for this important issue to be decided in the due course of the administration of justice. This case should be determined based on the facts and the law, not based on politics.

That is why we feel compelled to respond to the letter that you recently received from several members of the Health, Education, Labor and Pensions Committee (the "May 3rd letter") asking that you reveal the legal arguments and strategy that you intend to pursue in this case to members of Congress. We believe that it would be inappropriate for the General Counsel's office to compromise its litigating position by detailing its legal strategy in this manner.

Just as NLRB is an independent adjudicatory agency, the NLRB General Counsel is an independent prosecutorial office responsible for the investigation and prosecution of unfair labor practice cases. As with any independent agency or entity, political pressure from elected officials should not play a role in how you fulfill your duties. Indeed, if the NLRB were to improperly consider political pressure or other extraneous factors in adjudicating this case, it could ultimately undermine the legal validity of the decision. Instead, we urge you to evaluate this case, and every other case you handle in your capacity as Acting General Counsel, based on the facts and your considered opinion of the law.

We also want to address statements that have been made implying that your actions in the present case will jeopardize your pending nomination before this Committee. We would like to take this opportunity to assure you that we respect the independence of the NLRB and have great respect for the work that you have done in your more than 30 years as a career public servant at the Board. We assure you that we will do all we can to ensure that your nomination before this Committee will be considered based on your qualifications for the job.

We thank you for your attention to this matter.

Tom Harkin [IA]
Chairman

Barbara A. Mikulski [MD]

Jeff Bingaman [NM]

Patty Murray [WA]

Bernard Sanders [VT]

Robert P. Casey, Jr. [PA]

Jeff Merkley [OR]

Al Franken [MN]

Sheldon Whitehouse [RI]

Richard Blumenthal [CT]